Calendar No. 178

101ST CONGRESS *1st Session*	SENATE	REPORT 101-91

MOTOR CARRIER SAFETY ACT OF 1989

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

together with

ADDITIONAL VIEWS

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 819

JULY 27, (legislative day, JANUARY 3), 1989.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE
29-010 WASHINGTON : 1989

5263-22

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JULY 27 (legislative day, JANUARY 3), 1989.—Ordered to be printed

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

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ADDITIONAL VIEWS

[To accompany S. 819]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 819) to strengthen the enforcement of motor carrier safety laws, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF THE BILL

The bill as reported would require the Department of Transportation (DOT) to make public the names of motor carriers receiving unsatisfactory safety ratings from the Federal Highway Administration (FHWA) and ban these carriers from transporting hazardous materials or operating passenger buses. The bill would also require DOT to develop operational guidelines for suspending the operation of any motor carrier posing an imminent hazard to safety. Also, the bill would double the penalties for distributing drugs at truck stops and rest areas, require a rulemaking on whether brake improvements are needed, and allow FHWA inspectors to be eligible for an increase in pay. In addition, the bill would mandate random reinspections of vehicles placed out-of-service for safety violations, and the use of certification forms for all violations, to make sure such conditions are corrected. Finally, this legislation would require DOT to develop procedures for FHWA to use to initiate an

enforcement action against a motor carrier accused of committing a serious safety violation, as well as require a DOT rulemaking on the need to improve truck visibility.

Background and Needs

Truck and bus (motor carrier) safety has been an issue of continuing concern for the Committee. The Committee has conducted numerous hearings and reported legislation on this issue in the 95th through the 100th Congresses.

Last year, Congress passed the Truck and Bus Safety and Regulatory Reform Act of 1988, continuing its initiatives designed to improve motor carrier safety in particular and highway safety in general. That legislation eliminated the exemption from the Federal Motor Carrier Safety Regulations (FMCSR) granted to interstate commercial drivers and equipment operating solely within metropolitan areas known as commerical zones (e.g. the area encompassed by the Washington, DC beltway). The 1988 Act also called on DOT to conduct a rulemaking on the need to control hours of service abuses by drivers through the use of on-board monitoring devices, and a study on ways to improve braking performance (e.g. anti-lock brake systems).

In addition, the Congress passed the Commercial Motor Vehicle Safety Act of 1986. This Act established a uniform national standard for licensing operators of commercial vehicles, in order to assure that such vehicles are driven by qualified professionals. The Congress also approved passage of the Surface Transportation Assistance Act of 1982, which created the Motor Carrier Safety Assistance Program (MCSAP). This program provides Federal grant monies to the States to help such States finance roadside inspections of commercial vehicles.

Despite efforts made on the Federal, State, and local level to improve motor carrier safety, truck and bus accidents continue to cost our country numerous lives and tremendous expense. In 1988, over 6,000 persons were killed in heavy and medium truck and bus accidents. Eighty percent of those persons killed were passenger car occupants or pedestrians. Moreover, motor carrier crashes resulted in approximately 160,000 injuries and countless millions of dollars in expenses because of delays and clean-up costs. For example, a single truck accident on the Washington, DC beltway in September of 1988 cost over $500,000 to clean up, not to mention the millions of dollars lost in productivity. A study in Los Angeles estimated that heavy truck accidents cost the city more than $100 million annually when taking into account delays, spills, and clean-up costs. The Committee believes that this human and financial toll warrants further legislative action.

Since the Committee reported out motor carrier safety legislation in July of 1987, it has obtained further information on ways to improve truck and bus safety. In October of 1988, the National Transportation Safety Board (NTSB) released the results of a study analyzing the causes of 189 heavy and medium truck accidents. The NTSB found that inadequate braking systems and the use of alcohol and drugs by truck operators were among the leading factors contributing to motor carrier accidents. In 32 of the 189 accidents

studied, the NTSB determined that poor brake performance was a contributing factor. The study also concluded that in 26 of the accidents the truck driver had been operating under the influence of alcohol or drugs.

Also, in November of 1988, the Chairman and Ranking Republican Member of the Committee requested that the Congressional Research Service (CRS) study FHWA's education and enforcement efforts in the area of motor carrier safety. The CRS study presented numerous options intended to improve FHWA's enforcement policies and practices in order to increase compliance with the FMCSR.

Specifically, the CRS noted that FHWA's policy of stressing education and technical assistance over enforcement actions has failed to improve adequately motor carrier compliance with the Federal safety regulations. According to CRS, a more vigorous enforcement posture on the part of FHWA would create the deterrence needed to help promote safety compliance throughout the motor carrier industry. CRS listed a number of options for promoting safety, including: (1) restricting the operations of hazardous material haulers and passenger bus operations that receive an "unsatisfactory" safety rating from FHWA; (2) requiring that an enforcement action be brought against any carrier accused of committing a serious safety violation; (3) increasing the grade level of FHWA's senior field inspectors; and (4) implementing FHWA's authority to suspend the operations of any motor carrier that poses an imminent hazard to safety.

In September of 1988, the Office of Technology Assessment (OTA) published the results of a comprehensive study of the current state of U.S. motor carrier safety. In the area of human factors in motor carrier accidents, OTA reviewed issues such as driver training, driver fatigue, and public education on truck safety. OTA also analyzed vehicle technologies that can improve safety in the motor carrier industry. In particular, the OTA found a need for improvements in truck braking systems, including the use of anti-lock brake systems. The OTA also found that improvements in truck visibility could lead to a substantial reduction in motor carrier accidents.

The results of these three studies and the recommendations made therein form the basis for S. 819 as reported. The Committee believes that this legislation makes a number of prudent improvements to current motor carrier safety programs, while at the same time creating new authority to lessen the toll exacted by truck and bus accidents.

Legislative History

On April 18, 1989, Senator Exon introduced for himself, and Senators Danforth, Kasten, Adams, the Motor Carrier Safety Act of 1989 (S. 819) which was referred to the Committee. Subsequently, Senator Mikulski was added as a cosponsor.

On April 18, 1989, the Surface Transportation Subcommittee held a hearing on new proposals to improve motor carrier safety incorporated in S. 819, as well as on the implementation of previous motor carrier safety legislation enacted by Congress. The sub-

committee heard testimony on S. 819 from DOT, OTA, CRS, the Arizona Department of Public Safety, and from representatives of the truck and bus industries, labor, public interest/safety groups, and groups affiliated with truck driver training schools.

On June 20, 1989, the Committee met in open executive session to consider the bill. The Committee by voice vote agreed to an amendment in the nature of a substitute offered by Senator Exon, and ordered the bill, as amended, to be reported favorably.

Summary of Major Provisions

As reported, S. 819 requires DOT to make publicly available the names of all motor carriers that receive an "unsatisfactory" safety rating from FHWA. In addition, no carrier receiving an unsatisfactory safety rating will be allowed to transport hazardous materials or operate passenger buses.

The bill requires DOT to develop operational guidelines for suspending the operation of any motor carrier which poses an imminent hazard to safety. This power was given to DOT under the Motor Carrier Safety Act of 1984 (P.L. 98-554) but has never been used.

In response to reports, studies, and testimony before the Committee, which have shown that truck stops and rest areas are the primary locations at which drugs are supplied to truck drivers, S. 819 doubles the penalty levels for distributing drugs at truck stops and rest areas. The increases penalties reflect the unique safety threat that these trucks represent to those persons who use our Nation's highways.

The bill calls for a DOT rulemaking on whether brake improvements are needed, including anti-lock brake systems and better brake compatibility.

S. 819, as reported, raises the grade level of qualified FHWA inspectors to a General Schedule (GS)-12, which is a level closer to that of Federal Railroad Administration and Federal Aviation Administration inspectors. This increase will help enable FHWA to keep their experienced inspectors in the field.

The bill, as reported, requires DOT to create a system to randomly reinspect vehicles placed out-of-service for previously noted infractions. This section also calls on DOT to initiate a program of accountability for correcting all safety violations found in MDSAP inspections.

The bill requires DOT to set forth procedures requiring FHWA inspectors to initiate an enforcement action against any motor carrier found guilty of a serious safety violation.

S. 819 also requires DOT to initiate a rulemaking on the need to adopt methods for making trucks more visible to motorists.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 13, 1989.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 819, the Motor Carrier Safety Act of 1989, as ordered reported by the Senate Committee on Commerce, Science, and Transportation, June 20, 1989. CBO expects that enactment of this bill would result in additional costs for the federal government of $1 million to $2 million annually. We do not expect the bill to result in significant costs for state or local governments.

S. 819 would mandate several regulatory and enforcement actions on the part of the Department of Transportation. Most of these would involve the department's motor carrier safety program, which is administered by the Federal Highway Administration (FHWA). The bill does not authorize any additional appropriations to carry out these mandates.

Among these provisions is one that would require federal inspectors to initiate enforcement actions against motor carriers found guilty of serious safety violations. Currently, the FHWA has greater flexibility in dealing with these carriers, and may pursue other strategies to bring a carrier into compliance with safety regulations before bringing an enforcement action. This requirement would lead to an increase in the number of such enforcement actions, but the exact level of increase and the cost of these additional actions is uncertain. We estimate that additional costs would probably range from $500,000 to $1 million per year. The federal government would probably collect some additional penalties, whch would offset at least some of these costs.

S. 819 would also impose new mandates concerning the FHWA's motor carrier safety rating process. The bill would require the FHWA to make the names of all motor carriers receiving unsatisfactory ratings available to the public. It would also require that all unsatisfactory ratings be reassessed within nine months, if requested by the carrier ("to the extent practicable"), and that a motor carrier receiving an unsatisfactory rating be prohibited from transporting hazardous materials or operating passenger buses. As a result of these requirements, particularly the last, the FHWA would probably have to devote additional staff resources to working with carriers with unsatisfactory ratings. The additional costs would probably be less than $1 million annually.

Another provision of this bill would raise the grade level of senior motor carrier inspectors from GS–11 to GS–12. The FHWA motor carrier safety workforce was increased substantially in fiscal years 1987 and 1988. While the FHWA now has approximately 200 safety inspectors, not counting managers, most of these positions are currently held by junior employees who would not be immediately affected by this change. We therefore estimate that the cost in fiscal year 1990 would be slight, probably about $50,000. This cost would increase yearly, however, as these newer employees in-

crease in seniority. Eventually, additional salary costs would probably be at least $500,000 per year.

This bill would also mandate new procedures to ensure that safety violations found during inspections funded through the Motor Carrier Safety Assistance Program (MCSAP) are corrected. State personnel conduct these inspections, but the federal government provides most of the funding. This provision could result in a redirection of MCSAP resources by the participating states. The FHWA is currently considering regulatory changes to address this issue.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Marjorie Miller.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS COVERED

Most of the sections of this bill pertain to motor carrier operations, commercial motor vehicles with a gross vehicle weight rating of 10,000 pounds or more, trailer semitrailers, and drivers of commercial motor vehicles. The FMCSR cover all interstate operations of commercial vehicles with a gross vehicle weight rating of 10,000 pounds or more. According to FHWA, in 1986 there were 191,158 motor carrier operations in the United States and in 1987, 5,300,000 registered vehicles with a gross vehicle weight rating of 10,000 pounds or more. In 1987, there were approximately 1,400,000 U.S. registered tractor semitrailers and approximately 3 million commercial motor vehicle drivers operating in interstate commerce that will be covered by the legislation.

The bill's provision doubling penalties for drug violations at truck stops and rest areas would cover anyone in the United States distributing or possessing with intent to distribute a controlled substance in or on, or within 1,000 feet of, a truck or rest area.

Finally, the provisions of the bill that increase the grade level of senior safety inspectors will initially apply to approximately 33 inspectors. As the number of inspectors advancing within FHWA increases, these employees also would be covered by the bill.

ECONOMIC IMPACT

The bill will require DOT to make publicly available the names and ratings of motor carriers assigned unsatisfactory safety ratings. The method by which DOT chooses to make this information available could significantly alter the various cost estimates. Approaches to comply with this requirement range from the periodic publication of the names of these carriers to a toll-free "800" number set up to handle specific requests for this information. An estimate provided by CRS periodically publishing the names of motor carriers receiving an unsatisfactory rating was approximate-

ly $2,000 annually. The estimate given by DOT for the telephonic system is approximately $140,000 annually.

The bill also will require DOT, to the extent possible, to reassess all motor carriers rated unsatisfactory within nine months. This should not pose a significant economic burden on DOT, since FHWA has indicated that this time-frame is generally within the scope of its current operating procedures, especially as it relates to carriers transporting hazardous materials and passengers.

Another provision of the bill would raise the grade level of qualified FHWA inspectors from a GS–11 to a GS–12. Of 303 FHWA safety inspectors and managers in its field offices, 33 senior inspectors would qualify immediately for this increase. The Committee estimates that this grade elevation would result in an initial cost of approximately $50,000 in fiscal year 1990, with a slight increase in this amount each year.

The bill also would require DOT to develop procedures to initiate enforcement actions against motor carriers found guilty of serious safety violations. Although this provision, in all likelihood, would cause an increase in FHWA's enforcement workload, this increase should be offset by improvements in internal enforcement policies, as well as expanded computerization of the inspection process. Secondly, additional penalties collected as a result of this section should offset a significant portion of these costs.

PRIVACY

This bill will have no adverse impact on the personal privacy of the individuals affected.

PAPERWORK

This bill would require some additional paperwork for DOT. Section 2 of the bill requires DOT to provide to the public, and periodically update, the safety ratings of those motor carriers rated unsatisfactory. This may be accomplished through a telephonic system or a written publication.

Under section 3 of the bill DOT would be required to submit to Congress operational guidelines for suspending the operation of any motor carrier which poses an imminent hazard to safety. Reports to Congress would be required of DOT by January 1 of 1991, 1992, and 1993 describing actions taken under these operational guidelines.

Section 5(b) of the bill requires a rulemaking on whether brake improvements are needed, including anti-lock brake systems and improved brake compatibility. DOT is currently studying the European and Australian experience with antilocks and is undergoing a fleet test of antilocks.

Under section 7 of the bill, DOT is required to issue a final rule establishing procedures to ensure that violations found during MCSAP inspections are corrected in a timely manner. This rule would establish a verification program for all States participating in MCSAP, a random reinspection program, and an accountability system, whereby repairs are certified as having been made on a form prescribed by DOT.

Section 8 requires DOT to establish operational procedures for FHWA safety inspectors to bring enforcement actions for serious safety violations. Though not frequently utilized, most of the criteria for bringing these actions already exist.

Finally, section 9 of the bill requires DOT to initiate a rulemaking on the need to adopt methods for making trucks more visible to motorists.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE

The "Motor Carrier Safety Act of 1989" is the bill's short title.

SECTION 2.—MOTOR CARRIER SAFETY RATINGS

By statute, FHWA at DOT has jurisdiction over the safety of all interstate motor carriers. One of FHWA's responsibilities is to conduct safety and compliance reviews of motor carriers at the carriers' principal place of business. These reviews determine whether a carrier is in compliance with the FMCSR and the Hazardous Materials Transportation Regulations. Upon completion of a review, the carrier receives a safety fitness rating of "satisfactory", "conditional", or "unsatisfactory." To date, FHWA has given a safety rating to over 70,000 motor carriers out of the estimated 180,000 interstate motor carriers operating in this country. More than one-half of the carriers have received a less than satisfactory safety rating.

This section of the bill focuses on those carriers which represent the greatest safety risk—those that receive an "unsatisfactory" safety rating. In order to receive a rating of unsatisfactory, a carrier must lack basic safety management control systems required by DOT (e.g., the checking of driver qualifications and the keeping of vehicle maintenance records), and have been involved in at least one preventable accident during the last 12 months. Roughly eight percent of the carriers rated to date have a safety and compliance record poor enough to receive an unsatisfactory rating.

Currently, over 1,200 motor carriers with "unsatisfactory" safety ratings transport hazardous materials over our Nation's highways. In addition, 84 passenger bus companies are operating with an "unsatisfactory" safety rating. This section requires the Secretary of Transportation (Secretary) to issue final rules within one year of enactment of this Act to: (1) provide that any motor carrier receiving an "unsatisfactory" safety rating shall be prohibited from transporting any load of hazardous materials requiring a placard or operating a passenger bus which carries more than 15 persons until such time as that carrier's rating has been upgraded to "conditional" or "satisfactory;" (2) establish a system to make readily available to the public the name of any motor carrier receiving an "unsatisfactory" safety rating; and (3) provide that an "unsatisfactory" carrier requesting a reassessment be re-rated, to the extent practicable, within nine months of the receipt of the request.

The Committee believes that the current lack of any penalties or restrictions imposed by DOT as a result of receiving an "unsatisfactory" safety rating offers no incentive for a motor carrier to comply with the FMCSR. The intention of the Committee is to offer such

an incentive by informing shippers, insurers, State enforcement officials, and other interested parties, of the names of unsatisfactory carriers. In addition, this provision will suspend the operation of hazardous materials haulers and passenger bus operators rated unsatisfactory. Because of their potential threat to human life, the Committee believes that these carriers, at a minimum, should be required to attain a "conditional" safety rating. In the case of an unsatisfactory-rated carrier transporting hazardous materials or passengers, FHWA is encouraged to complete a reassessment of the carrier more promptly than the 9-month limit recommended by this section. The primary goal of this section is to encourage compliance with the FMCSR and not to suspend longer than necessary the operation of motor carriers.

With respect to informing the public of the names of unsatisfactory carriers, this provision directs FHWA to consider options such as maintaining a telephonic service whereby the name of an unsatisfactory carrier may easily be obtained and frequently updated or publishing periodically updated lists of carriers with an "unsatisfactory" rating in the Federal Register or a similar source. The Committee expects that the FHWA will continue to operate under the same general guidelines which it currently uses to determine a carrier's safety fitness rating. Of course, refinements in the process are encouraged. However, any reluctance on the part of the FHWA to issue an "unsatisfactory" safety rating because of the provisions of this bill and the rating's increased importance to the motor carrier's operations would reduce highway safety.

Under regulations set forth in 49 CFR 385.15, due process is afforded a carrier that has received an "unsatisfactory" safety rating. Such carrier may petition for a factual review of the violations upon which the safety rating was based. With the advent of sanctions for unsatisfactory carriers laid out in this section, the need to assure factual accuracy becomes all the more important. Nevertheless, the Committee expects FHWA both to meet due process requirements and to move promptly to issue "unsatisfactory" ratings when a motor carrier's safety and compliance practices warrant such action.

SECTION 3.—IMMINENT HAZARDS TO SAFETY

Section 213 of the Motor Carrier Safety Act of 1984 (P.L. 98-554) amended section 521(b) of title 49, U.S. Code, to grant DOT the authority to shut down part or all of the operations of a motor carrier if such operation poses an "imminent hazard" to safety. The intent of the Congress in creating this authority was to give DOT the power to stop all or part of the operations of those few carriers whose safety systems are in such a state of disrepair that the presence of their vehicles on the highways "is likely to result in serious injury or death". To date, DOT has failed to use this authority. Section 3 of the bill requires DOT to develop guidelines to implement this authority and have them operational by its field staff no later than January 1, 1990. In addition to submitting the guidelines to the Congress by January 1, 1990, DOT is required to submit to Congress a report describing any actions taken under this "imminent

hazard" authority. The report is to be submitted every year in 1991, 1992, and 1993, not later than January 1.

SECTION 4.—DRUG VIOLATIONS AT TRUCK STOPS AND REST AREAS

A survey of 1,300 motor carrier operators conducted by the Regular Common Carrier Conference indicated that over one-third of all truck drivers sometimes operate their vehicles under the influence of illegal narcotics. On October 12, 1988, the NTSB released a study which found that of the 189 heavy truck accidents studied, 26 were directly attributable to the use of drugs or alcohol by the truck driver.

Drug use by truck and bus drivers is not a victimless crime. According to the Texas Department of Public Safety, on October of 1988, near Fort Hancock, Texas, a truck driver forced several motorists off the highway, injuring seven persons and killing a woman. After shooting a police officer, the driver tried to run the officer down with his tractor-trailer. The police on the scene said the driver was apparently driving under the influence of drugs. There was a similar tragedy over the 1988 Christmas holidays. The driver of a tractor-trailer rig went on an 80-mile long rampage down Interstate 10 and through rush hour traffic in San Antonio. During this rampage, the tractor-trailer crashed into more than 20 other vehicles and seriously injured two people. When the driver was arrested, he did not seem to know that he had done anything wrong. Police later found cocaine in the cab of the truck and filed drug charges against the driver. And in May of 1988, a truck driver rammed more than two dozen vehicles on a Los Angeles freeway. Miraculously, he caused only minor injuries. Police found drug paraphernalia, a partly smoked marijuana cigarette, and other narcotics in this cab.

The easiest areas at which to distribute drugs to truck drivers include roadside truck stops and rest areas—location where drivers frequently congregate for fuel, vehicle service, relaxation, and other needs. Such distribution is evidenced by two undercover sting operations conducted by the California Attorney General at California truck stops. More than 180 persons, including 40 truck drivers, were arrested for selling methamphetamines, cocaine, marijuana, and other drugs to officers posing as truck drivers.

The use of illegal drugs in the motor carrier industry is not unique. It is one example of a large societal problem. There is a difference, however, between drug use by motor carrier operators and drug use by the general public. The use of narcotics by a person operating an 80,000 pound truck represents an enormous threat not only to the safety of that driver but also to the lives of other highway travelers. This threat is reflected in the fact that according to the Insurance Institute for Highway Safety, over 80 percent of those persons killed in heavy truck accidents are passenger car occupants or pedestrians.

In an attempt to stem the tide of drugs supplies to truck drivers, this section creates a drug-free zone around roadside truck stops and rest areas. Specifically, this provision establishes minimum and increases maximum penalty levels for persons convicted of distributing or possessing with intent to distribute illegal narcotics

within 1000 feet of such areas. Under current law, a first offense conviction for selling under 50 kilograms of marijuana carrier with it no minimum penalty and a maximum of five years imprisonment. Under this provisions, a person convicted of selling the same drugs in a drug-free zone will serve a minimum of one year and up to ten years in prison. Similarly, a first offense conviction for selling under 500 grams of cocaine currently has no minimum penalty and maximum of 20 years imprisonment. Under the reported bill, the same conviction for selling within a drug-free zone will carry a minimum sentence of one year imprisonment with a maximum of 40 years. This section is modeled after section 405A of the Controlled Substances Act, which establishes similar drug-free zones around our Nation's schools.

The Committee believes that all truck stops and rest areas meeting the descriptions set forth in this provision should be clearly marked with signs denoting their status as a drug-free zone. The effect of such marking will be both to deter potential drug distribution and to facilitate prosecution under the increased penalty levels.

SECTION 5.—IMPROVED BRAKE SYSTEMS FOR COMMERCIAL MOTOR VEHICLES

In March 1987, DOT completed a Congressionally ordered study of truck braking performance. The study concluded that among all vehicle-related topics, efforts to improve truck brake systems should receive the highest priority. The study estimated that poor brake system performance could be involved as a contributing factor in up to one-third of all truck accidents. In addition, the NTSB truck safety study released in October 1988 found that 32 of the 189 accidents studied were at least partially caused by poor brakes. DOT has now undertaken a fleet study of trucks equipped with anti-lock brakes, to be completed in January 1991.

This section requires DOT to build upon these studies by completing a rulemaking before October 31, 1991, on the need to daopt methods for improved truck braking performance. The required rulemaking would be comprehensive, addressing basic brake problems, such as the compatibility between tractor brakes and trailer brakes, and methods of ensuring effecitve brake timing.

One of the braking issues the Committee would urge DOT to consider as part of its rulemaking is the need for uniform rating, testing, and labeling of after-market brake linings. Currently, brake performance can be compromised because mechanics cannot determine which linings are most compatible with the systems on which they are working. The Committee has expressed its concern over this issue during both the current and previous Congresses. In addition, the American Trucking Asscciations and the Society of Automotive Engineers agree that deficiencies in the area of brake lining labeling pose a substantial threat to the safe operation of commercial vehicles.

The rulemaking also would consider anti-lock brake systems. An anti-lock braking system prevents sustained lock-up of any wheel under its control. Wheel lock frequently occurs in quick ("panic") stop situations and is especially likely on wet or icy roadways. A

locked wheel loses its braking force and loses its directional reference (i.e. does not care which direction it is going). This can lead to a variety of problems including jackknifing and steering loss.

DOT wrote a rule requiring anti-lock brakes in newly manufactured tractors and trailers in the mid-1970's. The anti-lock brakes available at that time were primitive. When these primitive anti-lock brakes failed, the DOT rule was struck down by the courts. In the intervening years, however, a new generation of anti-lock brakes has been developed. As of 1991, all newly manufactured tractors, trailers, and buses in Europe must be equipped with anti-lock brake systems in order to receive Common Market approval.

In the rulemaking required by this section, DOT would not be required to write any brake performance standards. It is the intent of the Committee, however, that DOT shall issue such standards if such standards would be reasonable and practicable, would meet the need for motor carrier safety, and can be stated in objective terms. If a rule is promulgated, such rule shall take into account the need for effective enforcement.

SECTION 6.—SAFETY INSPECTOR GRADE LEVELS

At the end of fiscal year 1988, FHWA had 303 inspectors and managers in its field offices to carry out its safety and compliance reviews of motor carriers. An essential component of this inspection force is a group of 33 senior, experienced safety inspectors who continue to work on a daily basis with the commercial motor carrier industry. FHWA is having difficulty keeping such experienced personnel where they are most needed—in the field. Currently, these senior inspectors cannot go above the GS–11 level on the General Schedule pay scale and continue to work primarily in the field. As a result, many of these men and women switch to FHWA program management jobs, or become inspectors and managers for other Federal safety agencie or the NTSB, all of which pay more.

This section is designed to raise the maximum salary level of experienced and qualified FHWA field inspectors to the GS–12 level. The intention of the Committee in authorizing this salary increase is to help maintain an experienced work force within the FHWA's inspection program. This will also serve as an incentive for FHWA's inspection new hires to continue advancing within this modal administration.

SECTION 7.—PROCEDURES TO ENSURE TIMELY CORRECTION OF SAFETY VIOLATIONS

MCSAP is an incentive grant program that offers money to the States primarily for conducting roadside inspections of commercial motor vehicles. MCSAP has helped increase the number of State roadside inspections from 374,885 in 1985 to 1,254,385 in 1988.

Roughly 40 percent of the trucks inspected through this program are placed out-of-service for critical safety defects. In addition, close to seven percent of the drivers inspected are placed out-of-service for not having medical cards, not properly maintaining a log book of their driving hours, or for violating other driver regulations. All out-of-service violations must be corrected before the vehicle or the driver may get back on the road. Studies conducted by the State of

Michigan and various regions of the Commercial Vehicle Safety Alliance have indicated that approximately 10 percent of the trucks and 18 percent of the drivers placed out-of-service for serious safety violations return to the highway without correction of the violations.

In order to improve the integrity of MCSAP, particularly the follow-up to its inspections, this section requires DOT to create a program for random reinspection of motor carries placed out-of-service to ensure the violations have been corrected. This verification program will have to be integrated into each State's inspection program for that State to continue receiving MCSAP funding. A Committee-requested CRS study of MCSAP concluded that such a random reinspection system will serve as a deterrence to non-compliance, while using a minimal amount of MCSAP's resources.

Specifically, in developing regulations required by this section, the Committee expects DOT to review and analyze reinspection systems that have been used successfully by different States. Several States have used covert strategies, such as placing an enforcement officer one or two miles down the road from an inspection facility to reinspect vehicles that leave the facility after it closes. Other States randomly reinspect vehicles placed out-of-service just before operators of these vehicles are ready to leave the inspection facility. Finally, in the case of a vehicle that had recently been inspected, some State offices have rechecked out-of-service violations noted on the previous MCSAP inspection form. The Committee expects that all of these strategies and others will be encouraged, and that all of the MCSAP States will conduct verification efforts as soon as practicable.

In developing a MCSAP reinspection system, the Committee believes DOT should use its expertise to determine what percentage (e.g. 5 percent, 10 percent) of the vehicles placed out-of-service should be reinspected in order to help assure that violations are corrected. Under the reinspection provision, FHWA is directed to develop standards that will allow flexibility, but will require verification activities to continue throughout the year. Each State enforcement plan submitted to FHWA should specify how verifications will be accomplished.

This section also requires MCSAP offices to issue a form on which motor carriers will verify that *all* safety defects (both out-of-service and less serious ones) have been corrected. The certified form, which must meet DOT prescribed standards, then will be returned to the appropriate State entity. More than 40 of the MCSAP States already have a similar program of accountability.

SECTION 8.—SERIOUS SAFETY VIOLATIONS

In addition to safety reviews, FHWA uses significant resources to conduct compliance reviews of motor carriers. These comprehensive reviews can take three or more days to complete, with their primary focus on auditing fleet safety, maintenance, and other compliance records. When violations are found (such as hours-of-service violations or poor vehicle maintenance), FHWA can issue a warning or bring an enforcement case against the carrier. The Committee believes that serious safety violations such as falsifica-

tion of log books, employee health and safety violations showing reckless disregard for safety, and serious patterns of non-compliance, must be dealt with by an enforcement action. In such cases, issuance of a warning by FHWA is an inappropriate response and sends the wrong message to industry. The continuing large number of deaths and injuries caused by motor carrier accidents, combined with the high level of non-compliance with the FMCSR found in many companies, has prompted the Committee to strengthen FHWA's enforcement authorities and mandate.

Because of the time involved and FHWA's policy of emphasizing education over enforcement, relatively few of those carriers visited each year have an enforcement case brought against them. This is especially true for serious safety violations found during FHWA's first visit to a motor carrier. A Committee-requested CRS study of FHWA's truck safety program indicated that enforcement cases resulting from first visits are so rare, and fines resulting from violations noted during subsequent visits are so low, that the threat of a FHWA review often offers inadequate incentive for a carrier to improve its compliance practice. In many instances, a carrier will simply view these penalties as a cost of doing business.

This section will strengthen FHWA's enforcement authority by requiring DOT to establish operational procedures by January 1, 1990, for inspectors to initiate an enforcement action against a motor carrier when there is documentable evidence of serious safety violations. The Committee's intent in drafting this section is to increase compliance with the FMCSR by strengthening FHWA's enforcement of these regulations. Although this provision will increase FHWA's enforcement workload, this increase should be offset by improvements in internal enforcement policies, coupled with expanded computerization of the inspection process. FHWA estimates that these changes will shorten the time needed for an enforcement case from 40 to 15 hours.

The intent of this provision is not to do away with the educational and technical assistance programs currently conducted by FHWA. Rather, the Committee believes that, as a result of this provision, FHWA will be better able to promote compliance with the FMCSR by developing a more balanced program of education and enforcement.

SECTION 9.—TRUCK VISIBILITY

A study conducted by the National Highway Traffic Safety Administration and released in September of 1985 found that by placing reflective tape on the back of truck trailers, 15 percent of all heavy truck accidents could be avoided. More recently, a truck safety study conducted by OTA also found that improvements in truck visibility could substantially improve highway safety. In light of these studies, this section of the bill requires DOT to initiate and complete within two years after enactment a rulemaking on the need to adopt methods for making trucks more visible to motorists.

SECTION 10.—DEFINITIONS

This section defines "commercial driver's license", "commercial motor vehicle", "conditional", and "unsatisfactory".

ADDITIONAL VIEWS OF MR. GORTON

Mr. Chairman, I want to commend the Committee for approving legislation which should help keep our roads safer. Nearly 6,000 Americans are killed each year in heavy and medium truck and bus accidents. I believe the public will be well served by provisions such as drug-free truck stops and a DOT rulemaking on the need to adopt methods for improving truck brake performance.

I also support a provision requiring DOT to make public the names of all motor carriers that receive an "unsatisfactory" rating. Fortunately, this is only a small percentage of motor carriers. The bill will keep those unsafe carriers that transport hazardous material or operate passenger buses off the road until they prove that they have taken corrective actions.

In my review of the act, I was told of a matter which, while not directly related to the bill, I thought needed to be brought to the Committee's attention. Each year, approximately 40 percent to 45 percent of the motor carriers that are subject to a review by the FHWA receive a conditional rating. This rating is often based on violations involving incomplete paperwork or other relatively minor noncompliance measures. For a large firm, a review can last three to five days and involve hundreds of separate locations.

It was disturbing to me to learn that the company is not given a listing of the separate violations by the FHWA inspector. Instead, one example of a violation is listed along with a number citing how many times it occurred. For instance, John Smith drove over the maximum number of hours and a similar violation occurred in 20 other instances. The company has no way of refuting these allegations, or correcting mistakes that the inspector may have found. For a firm that values its safety reputation, more detailed information is extremely valuable.

Mr. Chairman, I intend to write the FHWA and ask them to explain this policy to me. I hope that they will agree that every motor carrier has the right to know the charges brought against it and will quickly correct the present situation.

SLADE GORTON.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TRUCK AND BUS SAFETY AND REGULATORY REFORM ACT OF 1988

Section 9101 of that Act

SEC. 9101. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—

Sec. 9101. Short title; table of contents.
Sec. 9102. Commercial zone exemption.
Sec. 9103. Hours of service.
Sec. 9104. Improved compliance with hours of service regulations.
Sec. 9105. Biometric identification system.
Sec. 9106. Emergency flares.
Sec. 9107. [Report on improved] *Improved* brake systems for commercial motor vehicles.

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Section 9107 of that Act

SEC. 9107. [REPORT ON] IMPROVED BRAKE SYSTEMS FOR COMMERCIAL MOTOR VEHICLES.

(a) *REPORT.*—Not later than January 30, 1991, the Secretary shall submit to Congress a report on whether or not commercial motor vehicles operating on any Federal-aid highway system should be equipped with improved brakes and brake systems in order to enhance the safe operation of such vehicles. Such report shall include an examination of available information and data on antilock systems, means of improving brake compatibility, and methods of ensuring the effectiveness of brake timing and the results of any field testing conducted by the Department of Transportation on brakes and brakes systems for commercial motor vehicles.

(b) RULEMAKING PROCEEDING.—The Secretary shall initiate a rulemaking proceeding not later the February 1, 1991. Such proceeding shall concern the need to adopt methods for improving braking performance standards for commercial motor vehicles and shall include an examination of antilock systems, means of improving brake compatibility, and methods of ensuring effectiveness of brake timing. Any rule which the Secretary determines to issue as a result of such proceeding regarding improved brake performance shall take into account the necessity for effective enforcement of such a rule. The Secretary shall conclude the proceeding required by this subsection not later than October 30, 1991.

CONTROLLED SUBSTANCES ACT

Part D of that Act

PART D—OFFENSES AND PENALTIES PROHIBITED ACTS A—PENALTIES

SEC. 401. (a) * * *

(b) Except as otherwise provided in section 405, 405A, [or 405B], *405(B), or 409* any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving—

(i) 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

(ii) through (vii) * * *

(viii) 100 grams or more of methampetamine, its salts, isomers, and salts of its isomers or 100 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisons of title 18, United States Code, or $4,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment which may not be less than 20 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $8,000,000 if the defendant is an individual or $20,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 405, 405A, [or 405B] *405(B), or 409* after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence. * * *

(B) through (D) * * *

(2) through (6) * * *

(c) through (g) * * *

SEC. 402 through SEC. 408. * * *

TRANSPORTATION SAFETY OFFENSES

SEC. 409. (a) Any person who violates section 401(a)(1) or section 416 by distributing or possessing with intent to distribute a controlled substance in or on, or within one thousand feet of, a truck stop or safety rest area is (except as provided in subsection (b)) punishable—

(1) by a term of imprisonment, or fine, or both, up to twice that authorized by section 401(b) of this title; and

(2) at least twice any term of supervised release authorized by section 401(b) for a first offense.

Except to the extent a greater minimum sentence is otherwise provided by section 401(b), a term imprisonment under this subsection shall be not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.

(b) Any person who violates section 401(a)(1) or section 416 by distributing or possessing with intent to distribute a controlled substance in or on, or within one thousand feet of, a truck stop or a safety rest area after a prior conviction or convictions under subsection (a) have become final is punishable—

(1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) a term of imprisonment of up to three times that authorized by section 401(b) of this title for a first offense, or a fine up to three times that authorized by section 401(b) of this title for a first offense, or both; and

(2) at least three times any term of supervised release authorized by section 401(b) of this title for a first offense.

(c) In the case of any sentence imposed under subsection (b), imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under subsection (b) shall not be eligible for parole under chapter 311 of title 18 of the United States Code until the individual has served the minimum sentence required by such subsection.

(d) For purposes of this section—

(1) the term "safety rest area" has the meaning given that term in part 752 of title 23, Code of Federal Regulations, as in effect on the date of enactment of this section; and

(2) the term "truck stop" means any facility (including any parking lot appurtenant thereto) with the capacity to provide fuel or service, or both, to any commercial motor vehicle as defined under section 12019(6) of the Commercial Motor Vehicle Safety Act of 1986, operating in commerce as defined in section 12019(3) of such Act.

SEC. 410 through SEC. 417 * * *

TITLE 49, UNITED STATES CODE

Section 521 of that Title

§ 521. Civil penalties

(a)(1) * * *

(2) through (5) * * *

(b)(1)*(A)* If the Secretary finds that a violation of section 3102 of this title or the Motor Carrier Safety Act of 1984 or section 12002, 12003, 12004, 12005(b), or 12008(d)(2) of the Commercial Motor Vehicle Safety Act of 1986, or a violation of a regulation issued under such sections or Act, has occurred, the Secretary shall issue a written notice to the violator. Such notice shall describe with reasonable particularity the nature of the violation found and the provision which has been violated. The notice shall fix a reasonable time for abatement of the violation, specify the proposed civil penalty, if any, and suggest actions which might be taken in order to abate the violation. The notice shall indicate that the violator may, within 15 days of service, notify the Secretary of the violator's intention to contest the matter. In the event of a contested notice, the Secretary shall afford such violator an opportunity for a hearing, pursuant to section 554 of title 5 following which the Secretary shall issue an order affirming, modifying, or vacating the notice of violation.

(B) The Secretary shall, not later than January 1, 1990, establish operational procedures to require a highway safety specialist or

other appropriate representative of the Secretary to initiate, at the time of a safety review, compliance review, or other inspection or audit activity, or within a reasonable time thereafter, an enforcement action whenever any of the offenses referred to in paragraph (2) (A) and (B) can be documented, except recordkeeping violations not specified by the Secretary as serious. The procedures shall—

(i) specify those serious recordkeeping violations for which an enforcement action shall be initiated, including instances in which the falsification of records of duty status or drivers' medical certificates is required or permitted, and such other recordkeeping violations as the Secretary determines to be serious; and

(ii) authorize, but not require, initiation of an enforcement action for recordkeeping violations not specified by the Secretary as serious.

(2) through (13) * * *

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